



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-99-092-52589

Office: Vermont Service Center

Date:

JAN 30 2001

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.


If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a youth pastor. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 22, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 22, 1997 to January 22, 1999.

In a letter dated January 19, 1999, the petitioner stated that the beneficiary "has more than three years' experience in Youth Ministry where he has served as an Associate Pastor for Youth and Director of Christian Education at the Church of the Open Bible in Saskatchewan." In a letter dated December 16, 1998, representatives of the Bethel Baptist Church in Canada stated that the beneficiary "was employed by the Church of the Open Bible . . . from 1996 to 1998 . . . and has been working with our youth again since May 1998." The petitioner also submitted the beneficiary's resume. This resume did not list any churches or other organizations where the beneficiary was a paid employee.

On May 25, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that:

To the extent that [the beneficiary] gained some of his past experience on a volunteer basis, [he] supported himself and his family financially through the assistance of family with whom he lived and through part-time employment, which included an internship at the Bethel Baptist Church in Sechelt.

On appeal, the petitioner submits another resume prepared by the beneficiary. This resume is identical to the one submitted with the petition, except that it also lists "professional experience." According to this resume, the beneficiary was an assistant pastor and director of christian education in Swift Current, Saskatchewan from October 1996 to April 1998 and was an itinerant pastor at the [REDACTED] Baptist Church in Sechelt, British Columbia from May 1998 to the date of the appeal. A representative of the Church [REDACTED] states that the beneficiary "was employed full time as Assistant Pastor at the Church [REDACTED] for the period

October, 1996 to April, 1998." This individual also provides a job description for assistant pastors which indicates that "his salary will be recommended by the Church Council."

The petitioner has submitted letters from representatives of various churches who assert that the beneficiary has worked as an assistant pastor or a youth pastor throughout the two-year period prior to filing. The petitioner has not, however, submitted any contemporary, documentary evidence (such as cancelled pay checks, tax documents, or time sheets) to support these assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, the petitioner has not documented that the beneficiary was continuously engaged in a religious occupation from January 22, 1997 to January 22, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4) or that it had the ability to pay the beneficiary the proffered salary as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.